

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
April 25, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano

Members absent: none

Staff: Gerry Mylroie, Planner

Pledge of Allegiance

Minutes: April 11, 2013

Ms. Melanson moved to accept the minutes as submitted

Mr. Balano seconded

Motion carries with 6 in favor; 0 against; 1 abstention (Tuveson)

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no public comment.

ITEM 1 – Title 16 Amendment – Specialty Food and/or Beverage Facility definition and use

Action: Conduct second public hearing, review proposed amendment and recommend to Town Council.

Proposed amendment includes adding Specialty Food and/or Beverage Facility to the Town's Land Use and Development Code's definitions (Title 16.2) and to allow in various business related zones as a permitted use and as a special exception use in the Shoreland Overlay Zone (Title 16.3).

Ms. Tuveson recused herself given her bias on the issue and her potential financial gain should this ordinance amendment be enacted. **Mr. Emerson** and **Mr. Balano** noted they thought her involvement in the discussion of the proposed ordinance would not be a conflict as this is not an application before the Board. **Ms. Driscoll** also requested to recuse herself from discussion as her involvement has been evident in that applicants benefitting from this ordinance may be leasing space from property she owns and she wishes there to be no appearance of a conflict of interest on her part. Board members discussed bias and conflict of interest regarding ordinance review. **Ms. Grinnell** argued that she supported Ms. Tuveson's and Ms. Driscoll's request. **Mr. Emerson** suggested they could abstain from the final vote on the amendment, but participate in the public discussion.

Public Hearing opened at 6:15 p.m.

Todd Mott stated he wished to benefit from this ordinance amendment and is supportive.

Andrew Bevan, Salmon Falls Winery, South Berwick, stated he is also in support as he wishes to relocate to Kittery.

Ashley Parot, Love Lane, Kittery, supports the endeavors of Mr. Mott and Mr. Bevan, noting with the bridge closure, more people appear to be visiting Kittery businesses, and this will encourage new businesses.

Miranda Denavaris, 100 Rogers Road, noted she lives close to the proposed brewery and is in support of the area's revitalization and is supportive of the proposed amendment.

Jess [inaudible], **Chickadee Lane**, stated she thought this was very important to draw visitors to good restaurants in Kittery, rather than just the outlet shoppers.

Brendan Holden, 21 Williams Ave., supports the ordinance amendment to help with the adaptive reuse of a building and to encourage future opportunities. He read testimony from others:

- Brian Urick, ATTC, supports the zoning change to allow for a microbrewery in Kittery and other specialty approved brewing operations. As a private resident and business owner, this is a perfect

opportunity to expand Kittery's image and tax base when the new bridge opens in the summer and Kittery Foreside is a good start, but we could do more.

- Shawn Darling, 28 Wallingford Square, expressed his full support of this amendment. Over the past decade, Kittery has been blessed to host a number of incredible establishments serving as a boon to the local economy and the community as a whole. This proposal will continue to foster the wave to encourage residents and visitors alike to make Kittery their destination. Such momentum can only broker the continued success of restaurants we know and love as well as increase our exposure in the seacoast area. I strongly encourage you to approve this measure and welcome Brewmaster Todd Mott.

Mark Gianniny, 75 Brave Boat Harbor Road, spoke in favor of the zoning change.

Public Hearing closed at 6:22 p.m.

Mr. Mylroie summarized recent changes to the proposed definition, eliminating 'in limited quantities' and insert more descriptive language. [*Speciality Food and/or Beverage Facility means a facility wherein food and/or beverage is produced, sold on a wholesale or retail basis, distributed, and/or consumed on the premises as may be permitted by State of Maine law. This may include, but not be limited to, a brew pub, micro-brewery, coffee roaster and/or other facilities producing crafted alcoholic or non-alcoholic beverages and/or artisan food.*]

Mr. Balano asked how the Board can resolve the issue regarding quantities, such as number of barrels. He noted it is refreshing to see so many positive comments on an ordinance amendment. Mr. Emerson suggested the issue of quantities and community impact could be addressed under site plan review, per code, to be analyzed at the time of application submittal.

Mr. Balano moved to adopt the revised definition dated April 25, 2013 as submitted and amend the ordinance proposed from the April 2, 2013 Report to the Planning Board.

Mr. Melanson seconded

Ms. Grinnell stated she is in full support of the proposed changes, but wants to make sure these changes are placed in zones where they should be. Mr. Balano noted this amendment is not permitted in any residential zones. Mr. Melanson noted there is a possible project on Wilson Road in the Residential-Suburban Zone that may wish to place a winery in a barn. Mr. Emerson asked if a special exception could be extended for other zones. Ms. Driscoll suggested this be added to the punch list for future discussion.

Motion carries with 5 in favor, 0 opposed, 2 abstaining (Driscoll and Tuveson)

Mr. Balano moved to forward to Council for consideration and approval

Ms. Grinnell seconded

Motion carries with 5 in favor, 0 opposed, 2 abstaining (Driscoll and Tuveson)

DISCUSSIONS

ITEM 2 – Town Code Amendment - Chapter 11, Marine Development, Title 16 Land Use Development Code. Action: Review proposed amendment and schedule a public hearing. Amendments include changes to procedures allowing for Port Authority application submittal prior to obtaining State and Federal permit approvals.

Mr. Melanson summarized the request, and noted the current ordinance requires external permitting prior to application submittal to the Port Authority. As a practical matter, this has not been done, but rather all external permitting (e.g. the DEP and ACOE) would be received prior to the issuance of a building permit. The ordinance amendment is to clarify that applications must be submitted, with additional language requiring that all permits be received prior to the issuance of a building permit by the Code Enforcement Officer. The following changes are recommended:

16.11.2.E. The applicant must show at submittal that all necessary applications for permits, leases, approvals and any supporting documentation as may be required have been filed, including the following:

1. Department of Environmental Protection permit application pursuant to the Natural Resources Protection Act, 38 M.R.S. §480C;
 2. Army Corps of Engineers permit application; and
 3. Maine State Department of Conservation, Bureau of Parks and Lands, Submerged Land Coordinator application
- F. Any other details requested by the Planning Board or Port Authority.

and

16.11.3.F. All required local, Federal and State approvals must be received prior to the issuance of a building permit by the Code Enforcement Officer.

Ms. Driscoll asked if this has been reviewed under state law. Mr. Melanson stated the Charter and statutory authority does not address this. Title 16 ordinance requirements are not consistent regarding applications before the KPA and the Planning Board. Ms. Tuveson stated there is state and federal oversight of the applications before the KPA. Mr. Mylroie explained the requested change is to allow for local review while state and/or federal review is underway, similar to Planning Board applications. The applicant must demonstrate that those permit applications have been submitted to the proper authorities prior to KPA review. Mr. Emerson noted this application process is more involved than a sketch plan whereby the applicant must invest in external review costs at the onset of the application. He also noted shorefront development vs. shoreland overlay and when or if Planning Board review is required. This needs to be further clarified at a different time.

Mr. Balano moved to schedule a public hearing for changes to Title 16.11.2.E and 16.11.3.F as proposed
Ms. Tuveson seconded

Motion carries with 6 in favor; 1 opposed (Grinnell); 0 abstentions

Ms. Grinnell requested the Board take more time to review proposed ordinance amendments prior to moving to a public hearing. Possible additional changes to this section of the code will be added to the punch list.

ITEM 3 – Town Code Amendment - Quality Improvement Overlay Zone, Title 16 Land Use Development Code. Action: Review and discuss To provide flexibility for development to achieve stated Comprehensive Plan policies for quality developments in specific areas within the Town, an overlay zone is proposed for the following base zones: Commercial 1, 2, & 3; Business Local and Business Local-1; Business Park; Mixed Use; and Mixed Use- Kittery Foreside.

Ms. Grinnell requested this be tabled to another meeting. Mr. Emerson stated this has been around for awhile and suggested this item receive external review. Mr. Mylroie explained this is before the Board at this time because of development interests that do not conform with the existing code, noting in particular the Kittery Trading Post site, and this amendment would provide for flexibility. Ms. Tuveson noted this proposal is in lieu of contract zoning. Discussion followed regarding how to best approach the proposal for further review. Ms. Tuveson suggested the Board familiarize themselves fully with the proposal and develop a proactive approach for consideration. Ms. Driscoll suggested the Board workshop this item prior to bringing it forward for further discussion and a public hearing. Additionally, it would help to provide the Board with specific examples of how this proposal would apply in particular zones. Mr. Emerson stated this proposed amendment must also work in tandem with the comprehensive plan. Mr. Mylroie further explained limited areas would be identified for inclusion in the proposed overlay zone in order to address set-backs, building heights, and other standards that could be considered for flexibility.

Ms. Grinnell moved to hold a workshop on this item

Mr. Balano seconded

Motion carries unanimously

Break

ITEM 4 – Board Member Items / Discussion

Review the Board's punch list, update and establish priorities.

Board members reviewed the punch list and prioritized those items requiring further review.

There was general discussion regarding the punch list items, including road cuts, 'roads to nowhere' impacts, hazardous risk assessment (e.g. propane tanks).

Ms. Grinnell suggested the Chair and Planner determine the agenda for the May 23, 2013 meeting.

Mr. Balano noted he will not be available for the May Planning Board meetings.

Mr. Emerson reported to the Board members that the recent decision by the Board of Appeals regarding Yankee Commons Mobile Home Park expansion was in conflict with the decision by the Planning Board, peer review engineer recommendations and the Town Attorney's advice. He asked that the Town Attorney weigh in on the issue as it impacts the Board's decision.

ITEM 5 – Town Planner Items:

BIG project: Mr. Mylroie explained they have found there are no on-shore impacts, and could be reviewed by the KPA only. The KPA will be reviewing on May 2, 2013 should members wish to attend.

Mr. Melanson summarized the project's discussion began in 2010 with a grant approved by Council in November 2012. The project will improve the fisherman's pier and add floats. The water and electricity runs through a private property owner, and the project will correct this issue. The upland piece of the project is to run new water, electricity and communications down Bellamy Lane to the pier at a cost of \$330,000 of which all but \$90,000 is covered by the grant. To qualify for the grant, transient boating spaces had to be included. There will be 6 spaces on floats and 6 spaces on transient moorings. An ADA ramp, pump-out facilities, and electrical hook-ups will be included in the new design.

Mr. Mylroie explained there are no structures proposed, the new holding tank will be in the same location as the current, and a trench will be dug for utilities. This is a minor change and would not trigger Planning Board review. Ms. Driscoll noted concern about the holding tanks. Mr. Melanson stated the proposal has received DEP review and approval. Ms. Grinnell stated she believed the Board needs to see the plans for this item.

Ms. Grinnell moved to have the Planning Board review the proposed plan

Ms. Driscoll seconded

Mr. Melanson asked about the time frame for Board review. He explained numerous plan changes resulted in a delayed submittal to the Board.

Motion carries unanimously

Ms. Driscoll noted the Planning Board By-Laws changes by Councilor Dennett. This will be included on the punch list.

Mr. Mylroie brought up a proposal to amend an existing lobster business, noting the proposed changes are minor, but asked if the Board wished to review.

Ms. Grinnell moved that the project be brought before the Board for a determination review.

Ms. Driscoll seconded

Mr. Emerson stated the Board would review to determine if it is a major or minor change and proceed from there.

Motion carries unanimously.

Ms. Grinnell moved to adjourn

Mr. Alesse seconded

Motion carries unanimously

The Kittery Planning Board meeting of April 25, 2013 adjourned at 8:35 p.m.

Submitted by Jan Fisk, Recorder – May 6, 2013